

IN THE
SUPREME COURT
OF THE UNITED STATES

October Term, 1976

Case No. 76-1674

Supreme Court, U. S.

FILED

JUL 5 1977

MICHAEL RODAK, JR., CLERK

NORMAN STEPHENSON,
STEPHENSON ENTERPRISES,
INC., a corporation, and
LAKE BUTLER APPAREL
COMPANY, a Florida corporation,

Appellants,

-v-

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES, STATE
OF FLORIDA,

Appellee.

ON APPEAL FROM
THE SUPREME COURT OF THE
STATE OF FLORIDA

APPELLANTS' BRIEF IN OPPOSITION
TO APPELLEE'S MOTION TO
DISMISS AND/OR AFFIRM

Allan P. Clark
of
CAVEN & CLARK, P.A.
1216 Atlantic National Bank Building
Jacksonville, Florida 32202

Attorney for Appellants

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INTRODUCTION

The Appellants, Norman Stephenson, Stephen-
son Enterprises, Inc., a corporation, and Lake

Butler Apparel Company, a Florida corporation, file this reply brief in opposition to Appellee's Motion to Dismiss and/or Affirm the Decision and Order of the Supreme Court of Florida. Appellants received a copy of Appellee's Motion to Dismiss and/or Affirm on June 30, 1977. This reply brief will be limited to answering two contentions set forth in Appellee's Motion to Dismiss and/or Affirm, that is:

1. Appellee's contention that Appellants' Jurisdictional Statement fails to comply with Rule 15 of this Court (see Page 1-2 of Appellee's Motion to Dismiss and/or Affirm); and
2. Appellee's contention that this case involves only the question of requiring trucks and truck or motor vehicle trailers to stop for inspection at Florida's Department of Agriculture road-guard inspection stations (see Page 7 of Appellee's Motion to Dismiss and/or Affirm).

REPLY ARGUMENT TO
MOTION TO DISMISS AND/OR AFFIRM

Compliance With Rule 15

In support of Appellee's motion to dismiss, Appellee has concluded at Page 1 of its motion that Appellants have failed to comply with Rule 15 of this Court in the preparation of their Jurisdictional Statement. No supporting reasons nor argument are given in support of this bald assertion of failure to comply with the Court's Rules. Appellants would respectfully submit that Rule 15 has been complied with in all respects.

Roving Patrol Guards

Appellee has mistakenly asserted in its Motion to Dismiss and/or Affirm that the statutes in question involve only compulsory stoppings at fixed point locations, known as Florida Department of Agriculture road-guard inspection stations. See Page 7 of Appellee's Motion to Dismiss and/or Affirm. Appellee further erroneously contends that the issue of "roving patrol guards" has been raised for the first time on this appeal. See Page 7 of Appellee's Motion to Dismiss and/or Affirm. An affidavit was filed by an employee of Appellee in the trial court, the Baker County Circuit Court of Florida, verifying that roving inspectors were utilized by the Florida Department of Agriculture and Consumer Services, that the affiant was such a "roving inspector" and that he stopped one of Appellants' vehicles at other than a fixed point inspection station. This affidavit is reprinted in this reply brief in full. A. 1. When the trial court in and for the Eighth Judicial Circuit, Baker County, Florida, issued its order denying Appellants' request for summary judgment, it had before it the affidavit of the Department of Agriculture's roving inspector and concluded in its order, inter alia, that ". . . it is within the police powers of the state to cause to stop for inspection all trucks operating on the public highways . . ." See Appendix attached to Appellants' Jurisdictional Statement at Page A-4.

The fact that the Florida Department of Agriculture utilizes both fixed point inspection stations and roving inspectors who stop vehicles even when the vehicles are not at fixed road-guard inspection stations, was initially brought to the attention of the trial court in and for the Eighth Judicial Circuit,

Baker County, Florida, and has been part of the record in the proceedings below at all stages. Additionally, this point was further argued before the Supreme Court of the State of Florida in Appellants' Reply Brief at Pages 3-4, which are incorporated in this Reply Brief at page A.3.

Section 570.15(1), Florida Statutes,^{1/} as construed by the Courts below, grants to employees and officers of the Department of Agriculture and Consumer Services

". . . full access . . . to all . . . trucks, motor vehicles, other than private passenger automobiles with no trailer in tow or any vehicles bearing an RV license tag; (and) truck and motor vehicle trailers . . ."

This is the statutory premise upon which the stoppings and inspections are made at both fixed and roving location points. Subsection (2) of Section 570.15, Florida Statutes, makes it a criminal misdemeanor for any operator of a truck or motor vehicle trailer to pass any road-guard inspection station without first stopping for inspection. While this latter subsection imposes criminal sanctions, it does not dilute nor curtail the actual implementation of §570.15(1) which has been construed by the trial court below to permit the State of Florida to ". . . cause to stop for inspection all trucks operating on the public highways . . ."(Emphasis added.) See Appendix to Appellants' Jurisdictional Statement at A-4.

^{1/} The statutes in question are set out in full in Appellants' Jurisdictional Statement at pages 3-5.

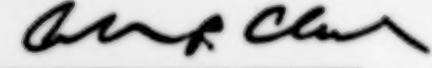
CONCLUSION

For the foregoing reasons and for the reasons set forth in Appellants' Jurisdictional Statement, Appellants respectfully suggest that the Court should deny Appellee's Motion to Dismiss and/or Affirm.

Respectfully submitted,

CAVEN & CLARK, P.A.

By



Allan P. Clark

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing have been furnished to Robert A. Chastain, General Counsel, State of Florida, Department of Agriculture and Consumer Services, and to Frank A. Graham, Jr., Resident Counsel, State of Florida, Department of Agriculture and Consumer Services, Room 513, Mayo Building, Tallahassee, Florida, 32304, by United States Mail, this 1st day of July, 1977.



Attorney

APPENDIX

IN THE CIRCUIT COURT,
EIGHTH JUDICIAL CIRCUIT,
IN AND FOR BAKER COUNTY,
FLORIDA

NORMAN STEPHENSON,
LAKE BUTLER APPAREL
COMPANY, a corporation,
and STEPHENSON ENTER-
PRISES, INC., a corporation.

Plaintiff,

NO. 73-147

-v-

DEPARTMENT OF AGRICULTURE
AND CONSUMER SERVICES, STATE
OF FLORIDA,

Defendant.

AFFIDAVIT IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT

STATE OF FLORIDA
COUNTY OF BRADFORD

Before me, the undersigned authority, personally appeared J.R. Sikes who, upon first being duly sworn, deposes and says:

1. That I ~~am~~ was a roving inspector for the Bureau of Road Guard of the Division of Inspection of the State of Florida Department of Agriculture and Consumer Services and ~~have~~ served in that capacity at all times pertinent to this law suit.

2. That on Friday, December 14, 1973, while covering my route as a road guard inspector I observed a pickup truck turn the corner at the junction of State Roads 121 and 2 and by observing the truck, I noted that it was loaded with something and pursued the same. The pickup truck accelerated its speed as if it was trying to beat me to the Georgia-Florida state line and I pulled up along side of the truck and turned on the blue light on my vehicle but the truck did not stop until after it got into Georgia.

3. That I pursued the truck into Georgia and when it came to a stop, the occupant, Norman Stephenson, asked me, "Who are you and what do you want?" When I identified myself, he told me to "go to hell" and drove off. I then called station #14 by radio and asked them to call Charlton County Sheriff, Ray Gibson, for assistance and I then followed the pickup truck to St. George and waited at the truck stop to see if the pickup truck was going south on Georgia State Road 121 before following it. The pickup truck only went south about two-tenths mile, turned around and headed north and I stopped Stephenson again. This time he told me to just forget about him, then got in his truck, turned around and headed south.

4. That I followed Stephenson until he stopped somewhere between St. George, Georgia, and Macclenny Road Guard Station. This time I did not get out of my car but just waited to see what he was going to do. Stephenson then got out and yelled back to me to "cut out your lights and you're liable to get hurt out here." He then got in his truck and drove off again.

5. That when Stephenson got to the Macclenny Road Guard Station that he ran it without even slowing down. I then stopped and asked inspector, D. L. Norman, to call the Sheriff's office and have the pickup

truck stopped in Macclenny. Two Baker County Deputy Sheriffs stopped the pickup truck at the junction of on State Road 121 and near Highway 90. At this time, Stephenson got out of his truck and began to give the deputies a hard time. He was then placed under arrest and carried to the Baker County jail and placed under bond.

Further affiant sayeth not.

/s/ J. R. Sikes
J. R. Sikes

(Beginning of Page 3 of Reply Brief of Appellants filed in the Supreme Court of the State of Florida)

Department of Agriculture does not grant to the Department unbridled discretion to stop all vehicles to determine what is being transported.

II. SECTIONS 570.15 AND 570.44(3), FLORIDA STATUTES, AS CONSTRUED BY THE DISTRICT COURT, DENY APPELLANTS' RIGHT TO BE FREE FROM UNREASONABLE SEARCH AND SEIZURE, THEIR RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW, THEIR RIGHT TO PRIVACY AND THE RIGHT TO TRAVEL FREELY ON THE HIGHWAYS OF THE UNITED STATES AS GUARANTEED BY BOTH THE UNITED STATES AND THE FLORIDA CONSTITUTIONS.

- A. Section 570.15(2), Florida Statutes (as amended in 1975) is Unconstitutional on its Face
- B. Florida Statutes §570.15(1)(b) Does Not Save the Constitutionally Impermissible Requirements of §570.15(2)

Appellee maintains that Section 570.15(1)(b) and the Department's policy in securing search warrants satisfies the requirements of the Fourth Amendment to the United States Constitution and Section 12 of the Declaration of Rights of the Florida Constitution. See Page 6 of Appellee's brief. The Department's own affidavits filed in opposition to Appellants' motion for summary judgment in the trial court patently destroy any notion that the Department is complying with constitutional mandates. The Department maintains "roving inspectors" who stop vehicles even when such vehicles are not at road guard inspection stations. See affidavit of J. R. Sikes, Roving Inspector for the Bureau of Road Guard of the Division of Inspection of the State of Florida, Department of Agriculture and Consumer Services. A.7. In the case at bar, one of these roving inspectors pursued the actual policy of the Department of Agriculture when he indiscriminately stopped one of the Appellants in this case because he noted ". . . that it (appellant's motor vehicle) was loaded with something and pursued the same . . ." A.7. The Department's policy of using roving inspectors is strikingly similar to United States Border Patrol roving inspectors whose activities were held to be unconstitutional and in violation of the Fourth Amendment in Almeida-Sanchez v. United States, 413 U.S. 266, 37 L.Ed.2d 596 (1973).

Finally, Appellee erroneously asserts that in the enforcement of inspection laws, the Fourth Amendment's search warrant requirement may be put asunder. See page 8 of Appellee's brief. This erroneous notion automatically flows from Appellee's mistaken reliance upon the continued vitality of Frank v. State of Maryland, 359 U.S. 360, 3 L.Ed.877, 79 S.Ct. 804. Any vitality that Frank v. Maryland, supra, had in regard to an

administrative exception to the Fourth Amendment search warrant requirement was sapped when the Supreme Court of the United States subsequently held that Frank v. Maryland was no longer controlling on this issue. See Camara v. Municipal Court, 387 U.S. 523, 18 L. Ed. 2d 930, 87 S.Ct. 1727 (1967). In Camara v. Municipal Court, supra, the Court, in expressly rejecting the contention that administrative searches need not be prosecuted within the Fourth Amendment's search warrant framework held that:

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